

REMARKS

In this response, claim 1 has been amended and claim 9-11 have been added. No claims have been canceled. Accordingly, claims 1-11 now remain pending in the present application. Reconsideration of the above-identified patent application is hereby requested.

I. Claim Rejections Under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by Cantales (U.S. Patent No. 3,900,106). Reconsideration and withdrawal of this rejection is requested in view of the amendments and addition made to the claims and of the following discussion.

To anticipate a claim under 35 U.S.C. § 102(b), the reference must teach each and every element of the claim. Applicant respectfully submits that Cantales does not teach each and every element of independent claim 1 as further discussed below. In addition, dependent claims 2-8, by virtue of depending on independent claim 1 also recite the same limitations described herein.

With respect to the rejection of independent claim 1, the Examiner states that "Cantales discloses the following: cup with frusto-conical wall, a lid, recess in wall of cup, lid being positioned in recess (Fig. 1)." Office Action dated 3/27/06 at page 2. Applicant initially notes that Cantales does not teach a cup, but teaches a garbage can.

Applicant has amended independent claim 1 to recite "wherein the recess is at least partially defined by a retaining member that overlies at least a portion of the periphery of the lid." (emphasis added). Cantales does not teach, show or suggest a retaining member. Applicant respectfully submits that the § 102(b) rejections are overcome with respect to independent claims 1 and 26. Applicant notes that pending dependent claims 2-9, by virtue of depending on independent claim 1, which recites the limitations described above, also recites the same limitations. Therefore dependent claims 2-9 are allowable for the same reasons.

Applicant submits that the § 102(b) rejections are overcome. Thus, Applicant respectfully requests that the § 102(b) rejections be withdrawn.

II. Claim Rejections Under 35 U.S.C. § 103.

The Examiner has rejected claims 3-4 and 7 under 35 U.S.C. § 103 as being unpatentable over Cantales in view of Tomer.

Applicant submits that independent claim 1 recites the limitations described by Applicant with regards to Applicant's response to the above 35 U.S.C. § 102 rejection. These limitations are not anticipated nor suggested by Cantales nor Tomer. Dependent claims 3-4 and 7, by virtue of depending on independent claim 1, also recite the same limitation. As neither Cantales nor Tomer, alone or in combination, teach or suggest the

limitations in independent claim 1, as described by the Examiner, Applicant submits that dependent claims 3-4 and 7 are allowable for the same reasons as discussed above.

In view of the foregoing discussion, Applicant submits that the § 103 rejections are overcome. Thus, Applicant respectfully requests that the § 103 rejections be withdrawn.

III. New Claims

Applicant has added claims 9-11. Claim 9 depends from claim 1 and is therefore allowable for the reasons stated above with respect to claim 1. However, claim 9 further distinguishes over Cantales because it recites "wherein the lid is separate from and unattached to the cup." In Cantales, The alleged lid is attached to the alleged cup by a hinge. Cantales does not teach, show or suggest providing a lid that is separate from the rest of the garbage can.

CONCLUSION

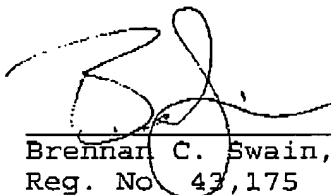
In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

Respectfully submitted,

Dated:

6/27/06

By:



Brennan C. Swain, Esq.

Reg. No. 43,175

1417 26th Street

Suite D

Santa Monica, CA 90404

(310) 721-9742